In the Supreme Court of the United States.

OCTOBER TERM, 1900.

GEORGE W. CROSSMAN ET AL., APPELLANTS,
v.
THE UNITED STATES. } No. 515.

THE HAWAIIAN CASE.

ORAL ARGUMENT OF JOHN K. RICHARDS, SOLICITOR-GENERAL OF THE UNITED STATES.

IN THE SUPREME COURT, TUESDAY, JANUARY 15, 1901.

The Solicitor-General then addressed the court as follows:

If the court please: I have discussed the general question involved in this case quite fully in the other cases, and I shall endeavor this morning to cut my argument as short as possible, and direct it to the distinctive features of this case, possibly, also, endeavoring to answer a few of the points made by opposing counsel upon the general question.

I think there could not be a case which more completely illustrates the absurdity of the broad contention of the other side than this case. I refer to the contention that immediately upon the cession or annexation

of territory it becomes at once an integral part of the United States within the meaning of the limitation of the taxing clause, so that instantly our customs and internal-revenue laws must apply there.

At the time the resolution of annexation was passed, the Republic of Hawaii had in force a government covering the entire field of government in those islands, regulating their municipal affairs, their customs, their taxes, their commerce their citizens, and that was the only government there. That government was carried on by the officers and agents of the Republic of Hawaii, and they constituted the only official authority in operation in the islands. Such was the situation at the time the resolution of annexation was passed, on July 7, 1898. There were no officers of the United States, there were no agents of the United States, there were no laws of the United States, in Hawaii. The laws of the United States were not there, nor were men there to execute them. The only laws in force were the laws of the Republic of Hawaii, the only government was the government of that Republic. And yet the contention is that just as soon as that resolution passed, immediately the customs and commercial regulations of the Hawaiian Republic were wiped out of existence. It is also said that instantly the customs and commercial regulations of the United States became operative, but it is not explained how they could be executed. There were no agents or officers of the United States there to execute them. And so if the effect of annexing that Territory was immediately to

abrogate all the existing laws of the Republic relating to commerce and revenue, it simply meant that instantly the ports of Hawaii were thrown open to the commerce of the world. It is said the laws and customs regulations of Hawaii could not be enforced, and yet there were no other laws in force, and no other officers to enforce any other laws. Therefore, instantly Hawaii would have been thrown open to the commerce of the world. And following the contention, the iron-clad constitutional argument of counsel on the other side, immediately the ports of the United States became open and free to commerce from Hawaii. Then the irresistible effect of the passage of the resolution of annexation was to make Hawaii an *entrepôt* to the United States, and allow the commerce of the world through Hawaii to enter here without the payment of duties.

Can it be contended for a moment that Congress under those circumstances would have passed this resolution of annexation? Would we have consented to annex Hawaii and make it an integral part of the United States, knowing that under the Constitution there could be no period of preparation within which to organize a government and put in force there our customs and commercial regulations? Certainly we would not. And yet in that same connection the court must observe that we could not have prepared to put in force in Hawaii instantly upon the passage of a resolution like that, our customs and commercial laws, because no officer of the Government would have been

authorized to send our agents there until it should have been finally and conclusively determined, by the passage of a resolution of annexation, or by the ratification of a treaty, that Hawaii was to be a part of the territory of the United States. Before the Government could take any steps to extend our laws and customs regulations to Hawaii, there must have been a conclusive, authentic expression on the part of the treaty-making or legislative power that Hawaii was to be ceded or annexed to the United States.

Now because of these facts the resolution of annexation provided for a period of preparation, a period during which time the existing laws of Hawaii should remain in force until a commission, to be composed jointly of representatives of this country and Hawaii, could frame a form of government to be put in operation in those islands. Let me call the attention of the court to some of the provisions of this resolution. The preamble says (30 Stat., 750):

> Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies.

Observe, there is the recital of a proposition on the part of the Government of Hawaii to cede the islands to the United States. I shall later call the attention of the court to the terms of that proposition. It was a proposition, however, to cede Hawaii to the United

States, and then the resolution goes on to accept that proposition. It says:

> Therefore, resolved that said cession is accepted.

Of course it was really a proposition to cede; it was not a cession until accepted by the United States, but the word "cession" is inadvertently used.

> That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States,

It does not say "a part of the United States," but a "part of the territory of the United States,"

> and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

Then follows a number of paragraphs, the first one reading:

> The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands, etc.

I shall read these later, but I want to call the attention of the court to the fact that immediately succeeding the paragraph which contains the cession are a number of paragraphs which state conditions which are annexed to the cession. Conditions—and I claim that if this Government has a right, by the treaty-making power, or by the legislative power, to acquire

territory, it has the authority to acquire upon conditions, whether those conditions be stated in the treaty, or whether they be stated in the resolution of annexation.

Mr. Justice HARLAN. What conditions do you refer to?

The SOLICITOR-GENERAL. I was about to read the first one. The first condition is that—

> The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition.

That is a peculiar condition relating to public lands there.

> Provided, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

That is one condition; here is another:

> Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

That was a mere method of continuing the Government of the Republic of Hawaii until such time as Congress, upon the report of the commission, composed of representatives of both the Republic of Hawaii and the United States, should frame a government adapted to the needs of the islands.

Later comes this provision—I am not reading all of the resolution:

> Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

Then it provides:

> The public debt of the Republic of Hawaii, lawfully existing at the date of the passage of this joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by the Government of the United States; but the liability of the United States in this regard shall in no case exceed $4,000,000. So long, however, as the existing Government and the present commercial relations of the Hawaiian Islands are continued, as hereinbefore provided—

That is, so long as they continue to collect the revenue through customs and taxes:

> Said Government shall continue to pay the interest on said debt.

Then comes in a condition or provision relating to the Chinese:

> There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

These were all conditions annexed to the proposed cession by the Republic of Hawaii to the United States, and were all conditions which the Government of the United States accepted and was in honor bound to observe, and did observe.

And I ought further to read the provision relating to the government:

> The President shall appoint five commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as soon as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper.

Now that resolution was, as I stated, in response to a proposition from the Republic of Hawaii to cede that territory to the United States. The provisions of that proposition appear in the treaty of annexation of Hawaii, negotiated in 1897. That treaty is not printed in either of the briefs. I shall either hand the court the Senate document, which contains all the information relating to the annexation of Hawaii——

The CHIEF JUSTICE. Was there not a considerable

debate with reference to the question as to how the annexation of the territory should be made?

The SOLICITOR-GENERAL. I think there was quite a debate as to whether Hawaii could properly be annexed by resolution, some Senators contending that a treaty would have to be negotiated and ratified.

Mr. Justice HARLAN. A treaty between whom?

The SOLICITOR-GENERAL. A treaty between the Republic of Hawaii and the United States. But the obvious answer to that contention was that a treaty is supposed to be a continuing obligation between two existing parties, and immediately upon the cession of Hawaii the Government of the Republic of Hawaii would cease to exist; therefore, it was insisted by those who favored the method of annexation by legislative action, that a treaty could not properly be made.

The CHIEF JUSTICE. There was a proposed treaty?

The SOLICITOR-GENERAL. Yes; there was a proposed treaty, and the proposed treaty had been ratified by the Republic of Hawaii and was presented here.

The CHIEF JUSTICE. It was resisted?

The SOLICITOR-GENERAL. It was not ratified in the Senate; I think the necessary two-thirds could not be secured.

The CHIEF JUSTICE. In the case of Texas there was a statute.

The SOLICITOR-GENERAL. There was a case where the same thing was done. There was a treaty, and it failed of ratification.

The CHIEF JUSTICE. I think it did not fail, but it was perfectly obvious that it would fail.

The SOLICITOR-GENERAL. Yes; and so it was withdrawn.

What I wanted to call attention to is the fact that this treaty, which was negotiated in 1897, contains all of these conditions, which are found in the resolution of annexation. The first article provides for the cession, just as I read it. The second article relates to the public lands of Hawaii, substantially as I read it. The third article provides for the continuation, until Congress shall act, of the municipal government in force in the Territory, and it also contains this provision:

> Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands, the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

That is precisely the provision of the resolution, and it was one of the articles of the treaty. It contains the terms upon which the minds of the Republic of Hawaii and the United States met in providing for this annexation.

It is hardly necessary for me to go on and call attention to the provisions of the existing law which organized the Territory of Hawaii. That law extends and applies to the Territory the customs and commercial and revenue laws of the United States. There is, however, one provision in it—section 93—which was obviously inserted by Congress to prevent importers from taking advantage of the period of preparation to send goods into Hawaii, and from Hawaii, as soon as

trade should be made free between Hawaii and the United States, to send them into the United States; because section 93 provides:

> That imports from any of the Hawaiian islands, into any State or any other Territory of the United States, of any dutiable articles not the growth, production, or manufacture of said islands, and imported into them from any foreign country after July 7, 1898 [that was the date of the resolution], and before this act takes effect, shall pay the same duties that are imposed on the same articles when imported into the United States from any foreign country.

If the rigorous rule of construction which is applied to the Constitution is correct, of course a provision of that sort is invalid, although obviously proper and necessary under all the circumstances.

I desire now briefly to attempt to answer one or two of the points made by opposing counsel upon the general proposition. Counsel called attention, both in his brief and in his argument, to the fact that the words "the United States" are used with a preceding preposition, such as "within" or "throughout," in a geographical sense, in five places in the Constitution.

The first place to which he calls attention is in Article I, section 8, which reads:

> The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States.

There is no limitation in that as to *where* Congress

shall have power to lay and collect taxes, duties, imposts, and excises, and obviously the power extends throughout the entire territory under the dominion of the Union. But there is a limitation with regard to duties, imposts, and excises, the section saying:

> But all duties, imposts, and excises shall be uniform throughout the United States.

Counsel contends that "the United States" used here includes the States and all territory belonging to the United States. Why should the Constitution require that all duties, imposts, and excises shall be uniform throughout the United States in that sense? Counsel frames an argument upon this particular case, pointing out how certain people of Hawaii or certain importers into Hawaii were discriminated against by excessive taxes on certain goods, like whisky, etc. But I call attention to the fact—I did it before—that even if duties, imposts, and excises were required to be uniform throughout the United States in this broad sense, that would not protect the Territories—the dominion lying outside of the States—because within those Territories the United States exercises for the purposes of taxation both Federal and State power. Suppose the Government does levy a uniform excise or internal-revenue tax throughout all the States and throughout all the territory of the United States, does that prevent the Government, in raising local taxes, from exacting additional excises, if necessary, on the same goods in these Territories, over which it has both Federal and State jurisdiction?

Mr. Justice HARLAN. On the same articles?

The SOLICITOR-GENERAL. Yes; on the same articles—it could do so on the same articles. The States do now, and the court has said over and over again that Congress has all the power of the State. Because the Federal taxes on liquors, the Federal taxes on occupations, are required to be uniform throughout the United States, does it follow that Congress may not impose additional taxes on liquors, additional taxes on occupations, in the Territories, exactly as the States do? So, I submit, it is unreasonable to infer that the limitation was inserted for any other purpose than to protect and guard the people of the States, who had absolute control of their local taxes, against the unequal exercise of the Federal taxing power. The States insisted that, for Federal purposes, the United States should take only uniform taxes from them; that whenever a tax was exacted in one State it should be exacted uniformly throughout all the States. Obviously, however, the reason requiring such uniformity throughout the States does not in any wise apply to the Territories.

Mr. Justice HARLAN. Mr. Solicitor-General, do you think this case is affected at all—made any different by the act organizing the government of Hawaii?

The SOLICITOR-GENERAL. This case, of course, does not arise under the act of April 30, 1900, organizing the Territory; it is a case of importation before it was organized.

Mr. Justice HARLAN. Under your view, is the power

of Congress the same now as it was before that act of April 30, 1900, was passed?

The SOLICITOR-GENERAL. Does your honor mean to ask me whether Congress can repeal the laws which extend or apply the customs laws of the United States to Hawaii?

Mr. Justice HARLAN. No; I mean whether the rule of uniform taxes applies to that Territory just as it did before the government was established?

The SOLICITOR-GENERAL. No; it does not, because, with the exception pointed out in section 93, Congress has declared that for customs purposes and for internal-revenue purposes Hawaii shall be deemed to be a part of the United States.

Mr. Justice HARLAN. Congress could repeal that, couldn't it, and say it should not be a customs district—Congress could repeal that, then, according to your view, and say it should not be deemed a part of the United States even now?

The SOLICITOR-GENERAL. I think, since Hawaii is not one of the States of the Union, if it should become desirable (and I don't think it ever will become desirable to part with Hawaii) the United States could, making proper provision to protect all rights which have been vested within the islands, part with them. The only indissoluble, inseparable parts of the United States, as I take it, are the States of the Union, the governing body. I don't think there is any power to disintegrate the Union, but I do believe there is power to dispose of territory which simply belongs to the

United States. But of course that is a very serious question and I don't pretend to say the court would follow my view if it ever comes up.

Now the next paragraph to which attention is called is subdivision four of section 8, article 1, and that reads:

> The Congress shall have power to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

I called attention in my former argument to the fact that Mr. Madison, in the Federalist, said that that was inserted in order to give Congress the authority to remedy the diverse and conflicting legislation of the several States upon these subjects. Now, I simply want to call attention to the fact that this is *a grant of power*. The States or the people of the States granted Congress the right to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States. Was there any need to grant Congress the authority to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcy throughout the Territories belonging to the United States? Of course Congress could do that. But in view of the existing legislation in the States, and in view of the reservation of powers to the States, it was necessary to grant Congress the power to make the rule of naturalization and the laws of bankruptcy uniform throughout the United States—the States of the Union.

Counsel concedes that the next provision to which he calls attention, that which says Congress may determine the time of choosing the electors, etc., which day shall be the same "throughout the United States," only applies to the *United* States—the members of the Union.

Then he calls attention to the thirteenth amendment, and he presents an argument contending that the phraseology of that amendment was due to the fact that it was desired under any view of it to prohibit slavery in the States which had seceded. I do not concede that this is the reason that was put in. I think the phraseology itself shows that the words "or any place subject to their jurisdiction" was intended to include all territory outside the limits of the Union—of the United States. The amendment reads:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to *their* jurisdiction.

Now, I ask the court to what does the word "their" refer? "Or any place subject to *their* jurisdiction?" Obviously, it refers to the "United States." Slavery shall not exist within the United States or any place subject to *their* jurisdiction. How, then, can you construe the words "the United States" so as to include either the organized or the unorganized territory of the United States? Has the organized or the unorganized territory of the United States any part in the Govern-

ment of the United States? Does it exercise any jurisdiction? Is not "jurisdiction" within the meaning of that amendment exercised solely by the members of the Union, what Chief Justice Marshall called "the American Confederacy," the United States as a governing body? Obviously, the words "the United States," as here used, signify geographically that territory which participates in the Federal Government, the United States, and slavery is prohibited within the United States, and also within any place subject to *their* jurisdiction.

Mr. Justice HARLAN. Go back a moment to the other clause, I will ask you whether it is your view Congress could establish a uniform rule of naturalization of five years in the States, and apply a rule of two years in the Territories?

The SOLICITOR-GENERAL. I think the general spirit of the Constitution would prevent that.

Mr. Justice HARLAN. The spirit of the Constitution?

The SOLICITOR-GENERAL. I rather think so. On reflection, I may not be correct in saying that. I am disposed to think that Congress has quite absolute control over this matter of naturalization. It has passed acts naturalizing without reference to residence within the United States, or any particular part of the United States, as I understand it. It has naturalized certain tribes of Indians. It does in this act relating to Hawaii naturalize all those who were citizens of Hawaii on a particular date, the day Hawaii was turned over to the United States. Now, that included the Chinese and

men of all races there, who had, in accordance with the law of Hawaii, obtained citizenship. That was a case of naturalization *en bloc*.

Mr. Justice SHIRAS. And it was the same way when Texas was admitted, was it not?

The SOLICITOR-GENERAL. I understand so. So I will withdraw what I said indicating that Congress does not have control, and stand on the proposition that it does.

Now, with regard to this matter of duties on exports. Counsel insists that during the period of preparation, when duties were collected in Hawaii on goods imported into that country from the United States, those duties were duties upon exports. Now, really, I hardly think it is necessary for me at any length to argue that proposition. The resolution expressly provided (it was one of its conditions) that until the Government could be organized and the customs and commercial laws of the United States could be extended and applied to Hawaii, that Territory was to continue to be treated as foreign to the United States in all its commercial relations. And so goods going into Hawaii from the United States were imports into Hawaii, and duties were levied upon them there as imports, regardless of where they came from. It is not a case of a levying of duties on exports from the United States. Regardless of where their point of shipment was, these goods paid duty, because they were brought into Hawaii, which was to remain as a foreign country, with its own commercial, revenue, and customs laws,

until Congress should legislate for it and bring it within the commercial and revenue laws of the United States. And I want to say in that connection that counsel is mistaken in saying that the Government, in treating Hawaii and the Philippines and Porto Rico, has blown hot and blown cold, treated them when it could get money out of them as foreign country, and on the other hand treated them as domestic country when it might have to pay money out.

Counsel referred to a decision or ruling of the Treasury Department on the subject of drawback. And he said—I understood him to contend, that this particular ruling, holding that drawback could not be allowed on goods shipped to Porto Rico, was made with reference to trade prior to the passage of the Porto Rican act. Did you say that?

Mr. WICKHAM SMITH. Yes, sir.

The SOLICITOR-GENERAL. Well, the learned counsel is mistaken. It was not. It was made with regard to contemplated trade after the passage of the Porto Rican act. Before the passage of the Porto Rican act, and while the Dingley law was still enforced upon all goods shipped from Porto Rico into this country, Porto Rico was treated as a foreign country, and treated as a foreign country for the purpose of drawback, as well as for the purpose of collecting duties on goods shipped from Porto Rico into the United States. And this very ruling shows that. This was a letter written April 17, 1900, and while it does not state so, it was with relation to the Porto Rican act.

Mr. Justice SHIRAS. What was the date of the Porto Rican act?

The SOLICITOR-GENERAL. It was passed April 12, and took effect May 1, 1900.

And in view of the passage of the act, and in contemplation of what these parties desired to do under the Porto Rican act, they put this question of drawback under the Porto Rican act. And the ruling, or decision, is as follows:

> The Department is in receipt of your letter of the 12th instant [you see it was written the very day the act was passed] in which you request to be advised whether drawback can be allowed on salt used in curing meats exported to Cuba, Porto Rico, and the Philippine Islands. In reply I have to state that the Department is of opinion that Porto Rico is not a foreign country within the meaning of the drawback law, and that, therefore, no refund of duties can be allowed by way of drawback on goods exported to Porto Rico.
>
> The Department is further of the opinion that merchandise exported to Cuba and the Philippine Islands would be entitled to drawback.

It was the same way with regard to Hawaii during this period of preparation and before the customs laws of the United States were applied to Hawaii by the passage of the Hawaiian act—the country was treated as foreign for all purposes, customs and commercial——

Mr. Justice PECKHAM. The Department made a dis-

tinction, you say, between the Philippines and Porto Rico?

The SOLICITOR-GENERAL. That distinction was based upon the fact that the passage of the Porto Rican act took Porto Rico out of the class of foreign countries, according to the view of the Government, and made it a domestic country, a territory governed by the United States after the manner provided in that act. We have never levied duties brought into the United States from Porto Rico under the Dingley law since the passage of the Porto Rican act. We have applied to Porto Rico substantially all the provisions of the Dingley law with relation to goods going into Porto Rico. The duty of 15 per cent levied in the ports of the United States on goods coming from Porto Rico, and in Porto Rico on goods coming from the United States, is not under the Dingley law at all, and not on the theory that it is a foreign country.

Mr. Justice SHIRAS. It is only measured by the amount of the Dingley law.

The SOLICITOR-GENERAL. Yes, sir.

Mr. Justice WHITE. Then the assumption of the Treasury Department is that whatever may be the terms of the treaty by which Porto Rico and the Philippines were acquired, the effect of the act of Congress is to put Porto Rico on the same footing as other Territories of the United States.

The SOLICITOR-GENERAL. Not absolutely. It does not do that in all respects—there are distinctive features.

Mr. Justice WHITE. Irrespective of your argument so far as it is not a part of the United States—if the act deprived Porto Rico of its foreign character and made it a Territory of the United States different from the Philippines, then it must have made it a Territory of the United States in the sense of the other Territories of the United States, or that ruling would be incorrect?

The SOLICITOR-GENERAL. It did not make it a Territory of the United States in the sense of organized Territories, which are treated by Congress as parts of the United States for customs and revenue purposes. It is not treated as a part of the United States for all these purposes.

Mr. Justice MCKENNA. Made it not foreign country?

The SOLICITOR-GENERAL. It made it not foreign but a Territory of the United States with peculiar provisions of its own, not standing exactly in the same relation as organized Territories which have been treated by Congress for customs and revenue purposes as a part of the United States.

Mr. Justice SHIRAS. A third class of territories?

The SOLICITOR-GENERAL. Yes, a Territory with its own peculiar organization, which we claim Congress had a right to provide.

Mr. Justice MCKENNA. Do you claim the right is dependent upon the peculiar character of the country, or claim that right in the abstract? You answered Mr. Justice Peckham that it was a Territory of a peculiar class of organization. Do you base your contention that Congress has control of it on the ground of the peculiarity of the situation?

The SOLICITOR-GENERAL. I base my contention that Congress has control of it on exactly what Chief Justice Marshall, and a long line of chief justices and justices of this court have said, that under the Constitution Congress is given power to make all needful rules and regulations respecting the territory or other property belonging to the United States. And I think under that power it had the right to govern Porto Rico according to the needs of its situation and its people.

Mr. Justice MCKENNA. In the same sense it would have the right to govern any other territory?

The SOLICITOR-GENERAL. Yes; the power has always been exercised that way. Of course, if you take territory contiguous to the States, take the continental expanse of the United States, Congress has very properly treated that as a part of the United States practically for all purposes. But this is a different kind of territory, lying far outside of the former limits of the United States, located beyond seas, under peculiar conditions, with a peculiar population and its own peculiar needs, and I think that Congress has a perfect right to legislate with an eye to all that.

Mr. Justice PECKHAM. And which it may hold indefinitely as a colony?

The SOLICITOR-GENERAL. There is no disposition, so far as Porto Rico and Hawaii are concerned, to do that. They are the only insular Territories with respect to which Congress has yet legislated.

Mr. Justice PECKHAM. I am speaking of your argument in regard to the jurisdiction of Congress over

it—may hold it as a Territory forever, as a colony, and govern it?

The SOLICITOR-GENERAL. I think on the other hand Congress can dispose of it at any time. I do not believe, as I say, in the logical result of our opponents' contention, that we never can part with the Philippines, because it has become an integral part of the United States within the meaning of the Constitution. I think Congress can.

On the very day the Senate ratified the treaty of Paris (February 6, 1899) it resolved:

> That by the ratification of the pending treaty of peace with Spain, it is not intended to incorporate the inhabitants of said islands [the Philippines] into citizenship of the United States, nor is it intended to permanently annex said islands as an integral part of the territory of the United States; but it is the intention of the United States to establish on said islands a government suitable to the wants and conditions of the inhabitants of said islands, to prepare them for local self-government, and in due time to make such disposition of said islands as will best promote the interests of the citizens of the United States and the inhabitants of said islands. (Con. Rec., vol. 32, part 2, p. 1479.)

Now, what the resolution says we took the islands for the purpose of doing, I believe we can do under the Constitution.

Mr. Justice MCKENNA. Pardon me if I do not yet understand you. Do you mean to claim a different

power in Congress to govern what you call insular territory from what you call continental territory?

The SOLICITOR-GENERAL. Not at all. No different power; it is the same power that has always existed. But I say it has been exercised in the case of Porto Rico so as to frame a government adapted to the peculiar needs of that island, and I submit Congress has the right to do that.

All the provisions with regard to Porto Rico, that distinguish it, are merely temporary, to provide a temporary revenue for the island at a time when we could not apply there our own internal-revenue laws, or expect that a property tax could be collected. All the peculiar features of the Porto Rican act are purely temporary; they end on the 1st of March, 1902, and they end sooner if the local government of Porto Rico can meanwhile provide revenue enough to meet its needs.

And so with regard to this resolution of annexation. It provided a period of preparation until Congress could act, during which time the government and the laws of Hawaii were to continue in force. The Territorial government of Hawaii was not organized as soon as it would have been if the war with Spain had not intervened. That delayed the action of Congress

And now I want to call the attention of the court to the fact not only that there was never any objection made, when the resolution was submitted to Congress, to this particular clause continuing in force the customs regulations of Hawaii, but in preceding treaties which

contemplated the annexation of Hawaii to the United States an exactly similar provision was inserted. Let me call attention to the treaty of annexation negotiated in 1893, under the administration of President Harrison. The first article of that treaty provided:

> The Government of the Hawaiian Islands hereby cedes, from the date of the exchange of the ratifications of this treaty, absolutely and without reserve to the United States forever all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, renouncing in favor of the United States every sovereign right which as an independent nation it is now possessed; and henceforth said Hawaiian Islands and every island and key thereunto appertaining and each and every portion thereof shall become and be an integral part of the territory of the United States.

That is even stronger language than used in the resolution of annexation, because it uses before "part" the word "integral."

The second article of that treaty contains a cession of the public lands with precisely the same provision with regard to their proceeds that is contained in the resolution of annexation, and the third article provides as follows:

> Until Congress shall otherwise provide, the existing government and laws of the Hawaiian Islands are hereby continued, subject to the paramount authority of the United States. The President, by and with the advice and consent of the Senate, shall appoint a commissioner to

> reside in said islands who shall have the power to veto any act of said government, and any act disapproved by him shall thereupon be void and of no effect unless approved by the President.

The existing government was to continue, but the President was to have his personal representative there with an absolute veto power. And then the article goes on to provide:

> Congress shall, within one year from the exchange of the ratifications of this treaty, enact the necessary legislation to extend to the Hawaiian Islands the laws of the United States respecting duties upon imports, the internal revenue, commerce and navigation; but until Congress shall otherwise provide, the existing commercial relations of the Hawaiian Islands both with the United States and foreign countries shall continue as regards the commerce of said islands with the rest of the United States and with foreign countries.

In that treaty, notwithstanding the absolute cession, it was explicitly provided that the existing customs laws should continue in force until Congress should extend to the island the customs and commercial laws of the United States.

Mr. Justice WHITE. I understand that your legal contention on the general proposition in the case—your claim is, that this treaty, in effect, amounted to this, for the purpose of the argument: That if a treaty of cession should be made and the treaty should contain a stipulation, "This property is ceded to the United

States, subject, however, to the condition that the laws and government of the United States shall not apply or take effect until two years from this date"—therefore you claim that before the two years—even under whatever view may be taken of the questions—the power of the United States would not extend there?

The SOLICITOR-GENERAL. Under the resolution of annexation?

Mr. Justice WHITE. Yes.

The SOLICITOR-GENERAL. Exactly; that there should be a period of preparation, of time in which to adjust matters and put in force our laws. And that's a very proper condition.

Mr. Justice WHITE. You contend that even under the view of the other side as to the local regulations, that was a suspensive condition?

The SOLICITOR-GENERAL. Yes; with regard to the feature mentioned, the customs and commercial laws.

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No. 515.—October Term, 1900.

GEORGE W. CROSSMAN

vs.

THE UNITED STATES.

For briefs in behalf of The United States in this case see No. 486—De Lima vs. Bidwell.

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